

Surface Mining Reclamation and Enforcement, Interior

§ 872.33

Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

§ 872.30 How does OSM distribute and award prior balance replacement funds?

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) Subject to § 872.35, in seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

§ 872.31 Are there any restrictions on how you may use prior balance replacement funds?

(a) Yes. If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) Yes. If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

§ 872.32 What are certified in lieu funds?

“Certified in lieu funds” are moneys that we distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

§ 872.33 How does OSM distribute and award certified in lieu funds?

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) Subject to § 872.35, we annually distribute certified in lieu funds to you as shown in the following table:

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(i) October 1, 2008	25 percent of your 50 percent share of annual reclamation fee collections.
(ii) October 1, 2009	50 percent of your 50 percent share of annual reclamation fee collections.
(iii) October 1, 2010	75 percent of your 50 percent share of annual reclamation fee collections.

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In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(iv) October 1, 2011, and thereafter.	100 percent of your 50 percent share of annual reclamation fee collections.

(c) We award these funds to you in grants according to the provisions of part 885 of this chapter.

(d) At the same time we distribute certified in lieu funds to you under this section, we transfer the same amount to historic coal funds and make those funds available for annual grants under § 872.21 that same Federal fiscal year. We allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

(e) We will distribute to you the amounts we withhold under paragraph (b) of this section in two equal annual installments. We will do this in Federal fiscal years 2018 and 2019.

§ 872.34 Are there any restrictions on how you may use certified in lieu funds?

There are no limitations or restrictions on the use of certified in lieu funds in the Surface Mining Control and Reclamation Act Amendments of 2006 which were enacted as Division C, Title II, Subtitle A of P.L. 109-432.

§ 872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

(a) In any fiscal year in which the amount of Treasury funds required to be transferred under §§ 872.30 and 872.33 of this chapter and under section 402(i)(1) of SMCRA exceeds the maximum annual limit of \$490 million, we will adjust the amount of these payments to reduce them to the level of the cap. Each distribution or transfer for the FY will be reduced by the same percentage.

(b) We will not include amounts under section 402(h)(5)(A) as part of this calculation.

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

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30 CFR Ch. VII (7–1–10 Edition)

873.12 Future set-aside program criteria.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 59 FR 28170, May 31, 1994, unless otherwise noted.

§ 873.1 Scope.

This part provides requirements for the award of grants to States or Indian tribes for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.

§ 873.11 Applicability.

The provisions of this part apply to funds awarded, as defined in § 872.5 of this chapter, under section 402(g)(6)(A) of SMCRA before its amendment on December 20, 2006, and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

[73 FR 67638, Nov. 14, 2008]

§ 873.12 Future set-aside program criteria.

(a) Any State or Indian tribe may receive and retain, without regard to the limitation referred to in section 402(g)(1)(D) of SMCRA, up to 10 percent of the total of the funds distributed annually to such State or Indian tribe under sections 402(g)(1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal monies.

[73 FR 67638, Nov. 14, 2008]

PART 874—GENERAL RECLAMATION REQUIREMENTS

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